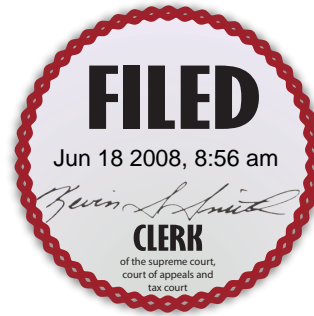


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

GEOWANDA HAYES,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A05-0712-CR-701

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila A. Carlisle, Judge
Cause No. 49G03-0609-MR-175547

June 18, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Geowanda Hayes (“Hayes”) appeals her conviction of Voluntary Manslaughter, as a Class A felony.¹ We affirm.

Issues

Hayes presents two issues for review:

- I. Whether the State failed to negate her claim of self-defense; and
- II. Whether her sentence is inappropriate.

Facts and Procedural History

On September 5, 2006, Hayes fatally shot her live-in boyfriend Gary Branch (“Branch”). On September 15, 2006, the State charged Hayes with Murder. Her bench trial commenced on October 29, 2007 and concluded on October 31, 2007. Hayes was found guilty of Voluntary Manslaughter. On November 9, 2007, she was sentenced to thirty years imprisonment, with five years suspended. She now appeals.

Discussion and Decision

I. Self Defense

At trial, the State presented evidence that Branch sustained multiple gunshot wounds causing his death. Hayes testified and conceded that she shot Branch, but claimed that she acted to defend herself. According to Hayes, Branch had beaten and threatened her repeatedly during their four-year relationship. Hayes also testified that, on the day in question, Branch had again threatened to kill her and moved toward a sofa where he customarily kept a gun.

A valid claim of self-defense is legal justification for an otherwise criminal act. Birdsong v. State, 685 N.E.2d 42, 45 (Ind. 1997). The defense is defined in Indiana Code Section 35-41-3-2(a):

A person is justified in using reasonable force against another person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force. However, a person:

- (1) is justified in using deadly force; and
- (2) does not have a duty to retreat;

if the person reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony. No person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary.

When a defendant raises a claim of self-defense, she is required to show three facts: (1) she was in a place where she had a right to be; (2) she acted without fault; and (3) she had a reasonable fear of death or serious bodily harm. Wallace v. State, 725 N.E.2d 837, 840 (Ind. 2000). Once a defendant claims self-defense, the State bears the burden of disproving at least one of these elements beyond a reasonable doubt for the defendant's claim to fail. Miller v. State, 720 N.E.2d 696, 700 (Ind. 1999). The State may meet this burden by rebutting the defense directly, by affirmatively showing the defendant did not act in self-defense, or by simply relying upon the sufficiency of its evidence in chief. Id. Whether the State has met its burden is a question of fact for the factfinder. Id. The trier of fact is not precluded from finding that a defendant used unreasonable force simply because the victim was the initial aggressor. Birdsong, 685 N.E.2d at 45.

¹ Ind. Code § 35-42-1-3.

The standard on appellate review of a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. Wallace, 725 N.E.2d at 840. We neither reweigh the evidence nor judge the credibility of witnesses. Id. If there is sufficient evidence of probative value to support the conclusion of the trier of fact, then the verdict will not be disturbed. Id.

The evidence negating Hayes's claim of self-defense is as follows. Officer Michael Mitchell testified that Hayes did not display scratches or bruises. The decedent was found unarmed. Hayes testified that, during her last argument with Branch, she had a gun in her hand when she walked into the living room but Branch did not. Hayes first shot Branch in the shoulder. He moved toward the kitchen and Hayes shot him again. Branch moved toward the door to the garage and Hayes shot him again. Branch entered the garage and Hayes shot him a fourth time. Branch raised the garage door, escaped to a house across the street, and collapsed on the porch. He had sustained four gunshot wounds, two of which were in his back. Firing multiple shots undercuts a claim of self-defense. Randolph v. State, 755 N.E.2d 572, 575 (Ind. 2001). This is likewise true for shots in the back. See Cooper v. State, 854 N.E.2d 831, 838 (Ind. 2006).

Accordingly, the fact-finder could have reasonably rejected Hayes's claim of self-defense.

II. Inappropriateness of Sentence

The range of possible sentences for a Class A felony is between a minimum of twenty years and a maximum of fifty years with an advisory sentence of thirty years. Ind. Code §

35-50-2-4. Hayes requests that we reduce her advisory sentence in accordance with Indiana Appellate Rule 7(B), which provides that we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender.”

With regard to the nature of the offense, the advisory sentence is the starting point in our consideration of an appropriate sentence for the crime committed. Childress v. State, 848 N.E.2d 1073, 1081 (Ind. 2006). The nature of the instant offense is that Hayes fired multiple shots into Branch. It appears from the testimony and evidence regarding the location of the blood splatter that some shots were fired as Branch was attempting to leave the residence. The events took place with Hayes’s four-year-old granddaughter inside the residence. These circumstances do not militate toward a sentence less than the advisory.²

As to the character of the offender, Hayes has a relatively minimal history of criminal convictions including one Class D felony and some misdemeanors.

In sum, neither the nature of the offense nor the character of the offender suggests a lesser sentence than that imposed, which is the advisory sentence with five years suspended.

Conclusion

There is sufficient evidence to negate Hayes’s claim of self-defense. She has not persuaded us that her sentence is inappropriate.

² Hayes contends that additional sentencing consideration should be afforded her because of her strong fear of Branch in light of the history of domestic abuse perpetrated upon her by Branch. However, it is apparent that the trial court already took Hayes’s fear into account in determining that Branch did not commit Murder, as charged, but rather acted under sudden heat and committed Voluntary Manslaughter. See Clark v. State, 834 N.E.2d 153, 156 (“Sudden heat is a mitigating factor that reduces what otherwise would be murder to voluntary manslaughter.”).

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.